ATTORNEY FOR APPELLANT:

PAUL D. STANKO
Appellate Public Defender
Crown Point, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

MONIKA PREKOPA TALBOT
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

ALONZO C. KIRKWOOD,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A04-0604-CR-208
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Richard J. Conroy, Judge
Cause No. 45G03-9503-CF-67

November 17, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Alonzo Kirkwood appeals his sentence following his conviction for Robbery, as a Class A felony, pursuant to a plea agreement. He presents a single issue for our review, namely, whether the trial court abused its discretion when it identified and weighed aggravators and mitigators and imposed an enhanced sentence.

We affirm.

FACTS AND PROCEDURAL HISTORY

On February 25, 1995, Kirkwood attacked and robbed Diana Goodman. Kirkwood struck Goodman on the head "with a claw hammer at least twelve times." Appellant's App. at 72. And Kirkwood took money and prescription medication from Goodman. The State charged Kirkwood with attempted murder, robbery, as a Class A felony, and being an habitual offender.

On March 5, 1996, Kirkwood entered into a plea agreement with the State whereby he pleaded guilty to robbery, as a Class A felony, and the State dismissed the attempted murder and habitual offender charges. The plea agreement left sentencing open to the trial court's discretion. The trial court imposed a forty-year sentence and ordered it to run consecutive to Kirkwood's sentence in Cause Number 45G03-9505-CF-00120. In 2006, Kirkwood filed a petition to file a belated notice of appeal, which the trial court granted. This appeal ensued.

DISCUSSION AND DECISION

Kirkwood contends that the trial court abused its discretion when it imposed an enhanced sentence. In particular, Kirkwood maintains that the trial court erred when it

identified as an aggravator that he was on parole at the time of the offense. Kirkwood also contends that the trial court should have assessed more mitigating weight to his guilty plea. He asserts that a proper weighing of the valid aggravators and mitigator should result in the imposition of a lesser sentence. We cannot agree.

Sentencing decisions lie within the sound discretion of the trial court and are reviewed only for an abuse of that discretion. Powell v. State, 751 N.E.2d 311, 314 (Ind. Ct. App. 2001). If the sentence imposed is authorized by statute, we will not revise or set aside the sentence unless it is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B); McCann v. State, 749 N.E.2d 1116, 1121 (Ind. 2001).

At sentencing, the trial court identified the following aggravators: (1) Kirkwood was on parole at the time of the offense; (2) his "long history of criminal activity," including five prior felonies; (3) he is in need of correctional treatment; (4) the risk that he will commit another crime; (5) Goodman suffered emotional injury and recommended an aggravated sentence; and (6) the nature and circumstances of the crime, that is, striking Goodman twelve times with a hammer. The trial court identified a single mitigator, namely, his guilty plea. The trial court found that the aggravators outweighed the mitigator and imposed an enhanced sentence of forty years.[1] The trial court ordered that the sentence run consecutive to Kirkwood's forty-year sentence in Cause Number 45G03-9505-CF-00120.

[1] At the time of the instant offense, the presumptive sentence for a Class A felony was twenty-five years, with up to twenty years added for aggravating circumstances. See Ind. Code § 35-50-2-4 (1994). The statute was amended, effective July 1995, to increase the presumptive sentence to thirty years.

Kirkwood first contends that the trial court erred when it considered his parole status as an aggravator. He maintains that the State did not present any evidence that he was on parole at the time of the offense. But the presentence investigation report shows that he was paroled on July 12, 1993 and that a notice of parole violation was filed on March 5, 1996, the date of the plea agreement in this case. Because there is evidence showing that Kirkwood was on parole at the time of this offense, the trial court did not err when it found that fact aggravating.[2] See, e.g., Ryle v. State, 842 N.E.2d 320, 325 (Ind. 2006) (holding trial court properly considered probationary status at time of offense as indicated in presentence report as aggravator in enhancing sentence), cert. denied, ---S.Ct.---, 2006 WL 1523008 (Oct. 2, 2006).

Kirkwood also contends that the trial court should have assessed more mitigating weight to his guilty plea. It is well settled that the finding of mitigating circumstances is within the discretion of the trial court. Hackett v. State, 716 N.E.2d 1273, 1277 (Ind. 1999). The trial court is not obligated to explain why it did not find a factor to be significantly mitigating. Chambliss v. State, 746 N.E.2d 73, 78 (Ind. 2001).

Here, Kirkwood cannot demonstrate that his guilty plea is entitled to significant mitigating weight because the State expended resources preparing for trial over a one-year period. More importantly, Kirkwood received a substantial benefit in that the State dismissed the attempted murder and habitual offender charges in exchange for his plea. See Wells v. State, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005) (holding guilty plea not worthy of significant mitigation where defendant receives substantial benefit), trans.

[2] Kirkwood does not challenge the validity of any of the other aggravators.

denied. We cannot say that the trial court abused its discretion when it did not assess more mitigating weight to Kirkwood's guilty plea.

In light of the myriad of aggravators the trial court identified, including Kirkwood's extensive criminal history, and given the heinous nature of the offense, we cannot say that the trial court abused its discretion when it imposed a forty-year sentence. In addition, the trial court did not abuse its discretion when it ordered the sentence to run consecutive to the sentence in Cause Number 45G03-9505-CF-00120. See Mathews v. State, 849 N.E.2d 578, 589 (Ind. 2006) (noting both sentence enhancement and imposition of consecutive sentences may be dependent upon same aggravators and single aggravator is sufficient to support consecutive sentences).

Affirmed.

BAKER, J., and DARDEN, J., concur.